

1414598 (Migration) [2015] AATA 3626 (12 November 2015)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mrs Thi Qui Nguyen
VISA APPLICANTS:	Mr Van Thuy Dien Duong Mr Van Nhat Duong
CASE NUMBER:	1414598
DIBP REFERENCE(S):	2013028245
MEMBER:	Amanda Goodier
DATE:	12 November 2015
PLACE OF DECISION:	Perth
DECISION:	The Tribunal affirms the decisions not to grant the visa applicants Partner (Provisional) (Class UF) visas.

Statement made on 12 November 2015 at 11:24am

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 26 June 2014 to refuse to grant the visa applicants Partner (Provisional) (Class UF) visas under s.65 of the *Migration Act 1958* (the Act).
2. The first named visa applicant (the visa applicant) applied for the visa on 30 December 2013 on the basis of their relationship with their sponsor, the review applicant. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.309.211 because the delegate was not satisfied the parties were in a genuine relationship. A copy of the delegate's decision was attached to the application for review.
4. The review applicant appeared by video link before the Tribunal on 22 July 2015 to give evidence and present arguments. The Tribunal also received oral evidence from Quang Thien Duong and Vinh Quang Nguyen.
5. The review applicant was represented in relation to the review by her registered migration agent. Prior to and following the hearing additional submissions were received addressing points raised by the delegate and concerns raised by the Tribunal during the hearing. The Tribunal was also provided with various untranslated documents claimed to be copies of a hotel bill in both names and an itemised telephone account as well as what appeared to be letters written in Vietnamese.
6. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

WHETHER THE PARTIES ARE IN A SPOUSE OR DE FACTO RELATIONSHIP

7. Clause 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the visa applicant claims to be the spouse of the review applicant who is an Australian citizen.
8. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as husband and wife to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion as to these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

9.

ARE THE PARTIES VALIDLY MARRIED?

10. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The review applicant provided a copy of her marriage certificate issued by the Vietnamese authorities indicating her marriage to the visa applicant on 4 April 2013 and registered on 9 April 2013. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

ARE THE OTHER REQUIREMENTS FOR A SPOUSAL RELATIONSHIP MET?

11. Financial aspects of the relationship

12. A transfer receipt of funds sent to the visa applicant in January 2013 was provided. The delegate refers to the review applicant sending funds totalling about \$550 to the visa applicant.
13. It was submitted that review applicant no longer sends funds to her husband as he feels uncomfortable receiving money from his wife as he does not want her to feel financial pressure as she does not work. He also does not send her gifts and she does not send him gifts.
14. The Tribunal finds that it is difficult for two people living in two separate countries to acquire property in joint names, open joint bank accounts, to borrow money jointly, so the only way they can pool resources is through money transfers.
15. As the parties live in two different countries the Tribunal gives little weight to this factor as evidence of a spousal relationship.

16. Nature of the household

17. The applicant provided receipts for accommodation in Vietnam during her visit in May 2014. The receipts were in Vietnamese apart from the review and visa applicants' names on the receipts and dates the accommodation was booked. A number of untranslated receipts were provided and without any identification as to what they represent, the Tribunal is unable to give any weight to these as evidence the relationship is genuine and continuing.
18. The review applicant told the Tribunal that when she returns to Vietnam she stays with her husband sometimes in his home and sometimes in a hotel. She also indicated that she spent time with her parents due to their age and health. She was able to describe the visa applicant's home. The review applicant told the Tribunal that the visa applicant lives with his 25 year old son who is studying IT. When she stays with her husband she goes shopping, cooks noodles or deep fried fish. Her husband buys fruit for her.
19. The evidence provided indicates that the review applicant has returned to Vietnam on 6 occasions from the time the parties first met. However the Tribunal has concerns detailed below as to how many of those visits were spent with the visa applicant and the length of time they spent together.
20. While there is evidence indicating the parties have spent short periods of time together since their marriage, they live in two different countries, have not lived together for any length of time or had the opportunity to establish a household. Therefore the Tribunal places little weight on this factor.

21. *Social aspects of the relationship*

22. Photographs of the wedding ceremony as well as photographs of the wedding party at a restaurant were provided. A number of photographs of the review and visa applicants at various places in Vietnam were provided as well as with family at home.
23. The review applicant provided a Form 888 dated 18 June 2013 from Phuoc Hau Le stating that he has known the review applicant for 5 years and the visa applicant for 1 year as he was living near them and got to know them. They communicate between each other, they love each other and he believes it is a genuine relationship.
24. The review applicant provided a Form 888 dated 18 June 2013 from Thi Nhung Duong stating she has known the review applicant for 11 years and the visa applicant 1 year. She has known the family for a long time and usually visits her and her children and goes out for shopping and dinner with her. She got to know the visa applicant over the telephone and talks to him. She believes the relationship is genuine and continuing as she is a good person and good mum who loves her children. After her divorce she lived alone to take care of the children and now they have grown up she is home alone and lonely. She was always asking the writer to go out and now she is very happy, talking about her husband. She has found in him a honest person who will take care of her. She loves him and misses him.
25. According to the delegate's decision, the visa applicant's father and Thi Nhung Duong's father are siblings. The decision also refers to Thi Nhung Duong stating that she often visited the review applicant and they went shopping together and dinner on weekends and that she met the visa applicant through the review applicant and spoke to him a few times on the telephone. It also states that the visa applicant and Thi Nhung Duong are related and acquainted with each other.
26. The Tribunal asked the visa applicant if he knew Thi Nhung Duong and was told that he knew a lady who worked with his wife and that his wife was single. The Tribunal asked the question again and was informed that she is a witness and can confirm that his wife is single and not married. The Tribunal asked if she was related to him and was told that she is his niece. According to the delegate's decision, the visa applicant stated during his interview that he knew in 2012 that that his cousin was the sponsor's friend.
27. The Tribunal asked the review applicant about Thi Nhung Duong. The Tribunal was told that she was one of the witnesses. The Tribunal put to her that according to the delegate's decision, this person was related to her husband and was told that she was a friend of her husband's and at first she did not know that her husband was a relative. Her father is her husband's younger brother. The Tribunal asked the review applicant whether they were acquainted with each other prior to her introducing them and was told that initially she did not know and it was only when she showed her the pictures that she said this is my father's brother. The Tribunal asked when she showed the photos and was told when she completed the paperwork and asked her to be a witness. The Tribunal asked again and was told when she applied for the sponsorship. The Tribunal put to the review applicant that surely she would have shown photos of her husband to her friend before applying for sponsorship and was told that she had the photos in Vietnam and forgot to bring them to Australia and then decided to bring them when she applied for the sponsorship. She did not think this detail was important and that is why it was not put in. The Tribunal asked where Thi Nhung Duong's parents live and was told Queensland. She also told the Tribunal that her friend had moved to Queensland to be near her parents. They met many years ago and went to the same Church. The Tribunal asked if she arranged her marriage and was told no.
28. The Tribunal found both the review applicant and visa applicant evasive in their responses when questioned about the relationship between Thi Nhung Duong and the visa applicant.

The Tribunal did not find the review applicant's evidence about Thi Nhung Duong credible. The Tribunal does not accept that the review applicant did not know that her witness, Thi Nhung Duong, was related to her husband until she showed her photos at the time she decided to complete the sponsorship. It is clear from the evidence referred to in the delegate's decision that Thi Nhung Duong in her Form 888 indicates that she spoke to the visa applicant over the telephone. No mention is made in any of the evidence presented that the witness and visa applicant are related until it was brought to their attention by the delegate.

29. The review applicant provided an untranslated copy of an invitation but it was not addressed to any particular person and the Tribunal is unable to place any weight on the invitation as evidence the applicants are perceived to be in a relationship and invited to functions together.
30. The Tribunal was provided with photographs of the review and visa applicants together sitting at a table and another outside an airport.
31. The witness Mr Duong told the Tribunal he had been a friend of the review applicant for a long time. He lived in Perth and moved to Queensland about a month ago. He has never met her husband but was told about him by her. He visited the review applicant's home two times when she was talking on the phone and said hello to the visa applicant as well. Last time he visited Vietnam was maybe 3 or 4 years ago. The review applicant told him that she is lonely and sad and her children are independent. She has nobody around and nobody to care for her when she is sick. She met her husband who has been honest and she wants him to come here so they can look after each other. He also told the Tribunal that he took the day off to come and give evidence in support of the review applicant but believes that she has not told everything. The Tribunal noted that Mr Duong assisted the review applicant during the hearing when she had difficulty responding to questions. At the end of the hearing he indicated she was not well and was not telling the Tribunal everything.
32. The Tribunal asked the review applicant about her wedding and who attended from her family. She indicated that there were about 6 tables of 10 people and too many people to remember as most were relatives of her husband. The review applicant indicated that just her older sister attended. The Tribunal asked if any other family members attended and was told no. When asked why they did not attend the Tribunal was told that they have their own families, are busy with their jobs and could not take time off. The Tribunal put to her that her wedding was an important occasion and they could not attend and was told they could not take time off. When asked by the Tribunal to tell it about his wedding the visa applicant stated that the review applicant's aunty and brother attended. The visa applicant indicated that from his family his brothers, nieces, nephews and friends, about 60 people attended.
33. Pursuant to s359AA the inconsistencies as to who attended the wedding from the review applicant's family from the visa applicant's evidence was put to the review applicant. A written submission was provided following the hearing. It was submitted that they were originally instructed that the review applicant's aunt and brother were at the wedding, they have now been instructed that the review applicant's sister attended the wedding and a person who is referred to as "aunt" by the family. It was submitted that the visa applicant did attend the wedding and was confused as he incorrectly believed that the review applicant's brother attended the wedding hence giving the wrong information.
34. From the evidence given, there appears to be some family and friend recognition of the spousal relationship and that they engaged in some joint social activities while in Vietnam.
- 35.

36. *Nature of persons' commitment to each other*

37. The review applicant provided a statement indicating that she had a relationship with a man with whom she departed Vietnam. She had 2 children with this man. They separated in 1990 and she does not know where he is nor do her children. She was unhappy and lonely. She spoke to a friend who she knew from the days after they left Vietnam, who was living in Malaysia and told her about her unhappy life. She introduced her to her brother who was single and living in Vietnam. She met him in 1994 and he was an open and gentle man and she thought he was suitable. However after he arrived in Australia and they started to live together, her children were not happy. She tried for harmony but it did not work and she separated from her second husband for her children's sake and they were divorced in 2000. She wants a companion to share her life with.
38. The visa applicant provided a statement that he was married in Vietnam and had 2 children. They lived in a house given by his ex-wife's grandmother. He tried to provide for his family but his ex-wife wanted more and grumbled he did not earn as much as others. The conflict became more serious and in 2007 they started to live separately. In 2008 they started divorce but did not for the children's sake. Eventually the divorce was finalised in February 2012.
39. Both the review and visa applicants provided detailed statements as to how they met, consulted with their respective families before deciding to marry. The both stated that they met coincidentally on a bus travelling from Can Tho to Bien Hoa. They became acquainted and exchanged phone numbers. They claim that the review applicant then called the visa applicant and they met in Ho Chi Minh City. The visa applicant returned to Vietnam in May 2012 and they spent a week together. The visa applicant asked the review applicant to be his wife in July 2012. Both indicated that it was not a quick decision but they thought about the relationship and discussed it with the family members and children before deciding to commit to each other. They met in March 2012, committed to each other in October 2012 and married in March 2013.
40. It was submitted that they regularly communicate by telephone and viber and send letters to each other. They usually communicate by phone card as it is more economical. According to the delegate's decision a copy of a telephone account for the sponsor was provided dated October 2012 to January 2013 showing about 3 calls per month.
41. In relation to concerns raised by the delegate, it was submitted that their meeting at the bus depot in Saigon on 28 March 2012 was purely coincidental. They became engaged about 7 months after their initial meeting with the visa applicant proposing on 9 July and the review applicant accepting the proposal on 18 October 2012 as she wanted to return to Australia and discuss the situation with her daughter and mother. Her daughter was initially reluctant for her mother to accept the proposal without meeting her future step-father personally, but eventually accepted the situation for the sake of her mother's future happiness. The review applicant felt she had spent sufficient amount of quality time with the visa applicant in Vietnam, they shared a background of broken marriages and were lonely. They believed they had reached a mutual understanding and developed trust in each other. There were about 60 people at their wedding and 2 representatives from each side attended to conduct traditional procedures. The review applicant had her aunty, 2 siblings and friends in attendance. It was submitted that she was unable to organise a ceremony in her home town as her mother and father were unwell, particularly her mother who could not move without great difficulty. Her parents' house was too small to accommodate guests for a ceremony and they made a conscious decision not to have a ceremony in her home town. The visa applicant's divorce was granted after 5 years of separation in 2012 and finalised prior to the review and visa applicant's meeting in person. It was submitted that when the review applicant visits Vietnam to spend time with her elderly parents, the visa applicant always

accompanies her. The visa applicant also visits the review applicant's parents in order to show respect and care for them, especially in the New Year.

42. When asked about the contact between the review applicant and visa applicant, the review applicant indicated that they sometimes speak once a fortnight and sometimes a couple of times a week. She buys a phone card from Optus and only speaks by telephone. When asked she indicated they talk about how he is, do the children go to school and the usual things. She indicated that he usually rings her more than she rings him, she can't remember but sometimes every week, sometimes every 2 weeks. The Tribunal asked by what other means do they communicate and was told they talk about 5 minutes. The review applicant indicated that talking on the phone is more convenient and they rarely send letters. She told the Tribunal that she has never sent him a letter but he has sent her 3 letters. The Tribunal confirmed her response and she responded that she has never sent him a letter and she only talked to him on the telephone.
43. The Tribunal was provided with 8 untranslated letters. Five were in envelopes addressed to the review applicant with postal stamps dated 4 & 15 May 2012, 23 September 2013, 29 September and 17 November 2014. All were written on the same notepaper. Three letters were addressed to the visa applicant with postal stamps dated 3 October 2012, 7 January & 13 June 2013. Also provided were two registered mail bills indicating the visa applicant sent something to the review applicant on 4 & 23 May 2012. As the letters are untranslated, the Tribunal is unable to verify the contents or give weight to the letters as evidence of communication between the parties.
44. The Tribunal put to her that the submissions state she communicates by viber and facetime and was told that she only talks by telephone. She stated she did not know she needed to provide evidence so threw them away. The Tribunal suggested she could obtain copies of her telephone records indicating the number she called to speak to the visa applicant. She indicated she would do so but none were forthcoming. Provided to the Tribunal were various telephone records in Vietnamese with the review applicant's telephone number highlighted. The dates on the records indicate they are for October and December 2014 as well as March, April, May and June 2015. A total of 14 calls were made of varying durations.
45. It was submitted that the visa applicant proposed in July 2012 but she did not accept until much later after consulting with her family. At hearing the review applicant stated that she thinks her husband is good and that is why she sponsored him. When asked about her husband's interests she stated he is a caring person, for example he told me to wear warm clothes, not to worry too much and that he would come to live with her. The Tribunal asked what things does he like to do and was told he likes mechanical things and at the moment he is repairing cars and he is working for somebody. She was asked to tell the Tribunal something she did not like about the visa applicant such as did he have a habit she did not like and she responded he is a caring person and has a good gentle personality and rates 8/10. She would like her husband to come to Australia soon.
46. The visa applicant told the Tribunal that his wife is a good and loving person.
47. The Tribunal asked the review applicant what she knew about her husband's family. She stated that the brother from the USA was at the wedding. The Tribunal asked what his name was and was told the visa applicant's family use No. 2, No. 3, No. 4 according to the level in their family and he is No. 3. The Tribunal asked about the brothers that live in Australia and was told he has one brother in Australia and she knows him as No. 4 and one sister in Australia. When asked the sister's name she responded that she was called the youngest. She told the Tribunal that her husband was the oldest. The Tribunal indicated that according to the application form her husband was not the eldest. The Tribunal indicated that there was no brother on the application form listed as living in the USA and the review applicant

responded she must have forgotten. The Tribunal asked how much she knew about her husband's family and was told that when she went back she met a lot of relatives and cannot remember the details of his relatives, only him.

48. The visa applicant told the Tribunal that he was middle in the family. He told the Tribunal that his older brother moved to the USA about 2 years ago and is aged about 70 years, one older brother is deceased, a younger brother lives in Australia as well as a younger sister.
49. Pursuant to the provisions of s359AA the inconsistencies in the visa applicant's evidence as to his position in his family with that given by the visa applicant were put to the visa applicant at hearing. The visa applicant indicated she would respond in writing. Following the hearing a submission dated 29 July 2015 was received stating that the review applicant was aware of the names but had a mental block due to her anxiety and nervousness. It continues that they are instructed that the review applicant communicates with the visa applicant's younger brother and sister in Australia and they often socialise together. It was submitted that the visa applicant is especially close to the visa applicant's younger sister who lives in Perth. She occasionally contacts the visa applicant's brother in the USA.

50. **Assessment**

51. Following the hearing a submission was received indicating that a medical report was requested, including a copy of a receipt to indicate payment of the report. As at the date of this decision, no medical report had been received.
52. It was submitted that the review and visa applicants were simple people not well educated. This was also confirmed by their witness. They were both anxious and nervous at their interview and especially nervous when interviewed by authority. It was submitted that the review applicant was extremely nervous and anxious and accordingly the writer believes that this accounts for some of the variations in answers between her and her husband. It was also submitted that this was compounded by the fact she is on substantial medications and the side effects may influence her mental capacity.
53. The Tribunal was provided with a sheet from MIMS showing an interaction between some of the review applicant's medications. The pharmacist consulted indicated that he cannot give a definite answer without knowing all the details but there may be some possibility of an impact on the review applicant. The sheet indicates that there may be an interaction between the medications and that a patient should be monitored closely. Copies of various prescriptions were also provided.
54. After considering all the evidence, the Tribunal is not satisfied the review and visa applicants have a mutual commitment to a genuine and continuing relationship. The Tribunal has taken into consideration the submissions that the review applicant was affected by her medications as well as feeling stressed and anxious on the day of the hearing. The Tribunal understands that applicants can feel anxious and stressed by Tribunal hearings which can affect their ability to give coherent and cohesive evidence. The Tribunal has had regard to the Tribunal's vulnerable person's policy when considering the evidence given by the review applicant. However the inconsistencies and gaps in the evidence provided is significant, even allowing for the effects of the medication and the review applicant's stress and anxiety participating in the hearing.
55. The review applicant told the Tribunal that her husband had visited her parents on one occasion while the visa applicant told the Tribunal that he had visited 5 to 6 times, for New Year, when they are sick and other occasions. The review applicant told the Tribunal that the visa applicant met her parents on one occasion just prior to the wedding ceremony. He has

also met her siblings once and on that occasion. She told the Tribunal that he does not go with her to visit family as her family home is very small.

56. This inconsistency was put to the review applicant pursuant to the provisions of s359AA. The visa applicant indicated she would respond in writing and following the hearing a written response was provided to the Tribunal by the review applicant's representative on 29 July 2015 stating that their instructions are that the visa applicant visited his wife's parents on a number of occasions but did not tell his wife as he did this as a matter of respect and traditional obligations and did not believe it was important to tell his wife. It was also submitted that the review applicant only found out about these visits for the first time at the hearing. However, it was submitted to the Tribunal by the review applicant's representative in a submission dated 16 July 2016 that the visa applicant regularly visits his parents-in-law in order to show respect and care for them, particularly in the New Year. The Tribunal does not accept the submissions dated 29 July 2015 by the review applicant's representative. It is clear from the submissions received by the Tribunal that the claim was that the visa applicant had visited his parents-in-law on a number of occasions yet when asked at hearing the review applicant indicated he had only visited on one occasion. The Tribunal does not accept that two people in a genuine and continuing relationship would not discuss one party's parents, especially when the evidence given is that the review applicant's parents are elderly and frail and live in a different country to their daughter. The Tribunal does not accept that the visa applicant would not keep his wife informed of her parents wellbeing and does not accept the representative's submissions that the review applicant only found out on the day of the hearing as it is clear from the submission dated 16 July 2015 that the claim was that the visa applicant visited the review applicant's parents on a regular basis. The Tribunal is not satisfied based on the inconsistencies in the evidence given that the visa applicant has visited the review applicant's parents as claimed, apart from the initial visit prior to their wedding.
57. It was submitted that the review and visa applicants are in regular contact with each other, mainly by phone cards but also by viber and letters to each other. However the review applicant told the Tribunal that she only spoke to the visa applicant by telephone and no other means and she usually uses phone cards. It was submitted that as the applicants use phone cards to communicate, they are unable to provide evidence of their regular communication. The review applicant's evidence to the Tribunal was that she only communicated by telephone with her husband. However, the Tribunal was provided with 3 letters purportedly sent by her to her husband. Despite indicating she would provide evidence of her calls to her husband none were forthcoming apart from the evidence as referred to in the delegate's decision that indicate about 3 calls a month between October 2012 and January 2013. The evidence also indicates that in a 6 month period the visa applicant called his wife about 14 times. The review applicant indicated in her evidence to the Tribunal that she telephones her husband about once a fortnight and sometimes a couple of time a week and her husband usually rings her more than she rings him, and while she can't remember, sometimes every week, sometimes every 2 weeks.
58. The Tribunal is not satisfied that the communication between the review and visa applicants amounts to regular communication between parties claimed to be in a genuine relationship. The Tribunal found the evidence of the review applicant as to how often she contacted her husband and how often he contacted her to be vague. Even after allowing for the review applicant's nerves, stress and anxiety at participating in the hearing, the Tribunal would have expected that a couple claiming to be in a genuine and continuing relationship for about 2 years would be more aware of their regular communication. While they both claim to use telephone cards and therefore are unable to provide evidence of their regular communication, their evidence to the Tribunal is that the review applicant usually telephones her husband about once a fortnight, sometimes twice a week and the visa applicant calls his wife sometimes every week and sometimes every two weeks. The visa applicant told the

Tribunal that he calls his wife about once a week from his home phone and sends letters to her. While the Tribunal acknowledges that the visa applicant has written to the review applicant several times, they both gave evidence that they communicate by telephone. The Tribunal is not satisfied that the level of communication between the review and visa applicants indicate a level of commitment expected in a genuine and continuing relationship.

59. The Tribunal is also concerned that after asking for her husband's telephone number and being advised it was in her phone, when asked to provide it she stated she had deleted it from her phone. She then told the Tribunal that she has 2 different phones and uses another phone to call her husband but that phone was at home. The Tribunal considers that a reasonable person in a similar position would be aware of the contact number of their husband of 2 years, especially when they claim that the prevailing method of communication is by telephone. The Tribunal does not accept that a person in a genuine relationship of about 2 years would not have their husband's telephone number in their phone, even allowing for the fact that another telephone may be the one used to do the majority of the calling.
60. The Tribunal asked the review applicant when she has visited her husband and was told about 10 times, then maybe less than that. She stated that whenever she has money she goes to Vietnam and usually stays 2 weeks and once for 4 weeks. She indicated that her parents are elderly and not well and she travels to see them and at the same time also visits her siblings. She told the Tribunal that when her parents are unwell she would stay long time but when they are better she would come back early to spend time with her husband.
61. The Tribunal asked the visa applicant how many times the review applicant has travelled to Vietnam to spend time with him and was told on 4 occasions. He indicated that when she travelled to Vietnam she would stay for various periods. On one occasion she stayed for 2 months, they went sightseeing and touring. Sometimes they stay in his house and other times in a hotel. The Tribunal asked if he went with her to visit her family and was told yes but he only stays for a short time as he has to return to look after his son who is 23 years of age and studying IT. He told the Tribunal the last time she visited was 22 May 2014 and she stayed 2 months. He confirmed with the Tribunal that his wife has visited him 4 times in Vietnam and every time she visits Vietnam she visits him.
62. Pursuant to s359AA the inconsistencies in the visa applicant's evidence as to how many times his wife has visited him in Vietnam and stayed with him was put to the review applicant. A written response was received following the hearing.
63. A copy of the review applicant's passport showing entry and exit stamps for Vietnam for 21 June to 2 August 2007, 2 February to 7 March 2010, 22 March to 4 April 2012, 29 May to 9 July 2012, 26 February to 3 May 2013, 9 June to 18 July 2013, 22 to 30 May 2014 and 3 to 28 February 2015 was provided to the Tribunal. It was submitted that in relation to the discrepancies in the number of visits, the review applicant's passport indicates there were 6 visits to Vietnam and the review and visa applicants spent most of this time together.
64. The Tribunal does not accept the submission that because the applicant's passport was stamped with 6 entry and exit stamps for Vietnam, this is the number of times the review applicant travelled to spend time with her husband. The evidence from both the review applicant and visa applicant was not consistent as to the number of times the review applicant has visited Vietnam and stayed with the visa applicant which was not consistent with the number of times contained in the submission. The submission to the Tribunal dated 16 July 2015 states that every time the review applicant visits her parents, the visa applicant accompanies her. The visa applicant's evidence is that he stays for a short period while the review applicant's evidence is that her husband has only visited her parents once just prior to their wedding. She also indicated that she spent time with her parents and then would

return to spend time with her husband. The Tribunal accepts based on the copies of the review applicant's passport that the review applicant has returned to Vietnam on a number of occasions. However the Tribunal finds based on the inconsistencies in the evidence given that the review and visa applicants have not been truthful as to the number of times the review applicant has returned to Vietnam to spend time with her husband or the length of time she claims to spend with him on her return. The visa applicant confirmed at hearing that the review applicant had returned 4 times to spend time with him when it is clear from the evidence provided that the review applicant has returned on more than 4 occasions. The Tribunal is also concerned that the visa applicant referred to the review applicant's last visit in May 2014, indicating she stayed for 2 months with him when the evidence clearly indicates that the review applicant was in Vietnam in February 2015 and that in May 2014 she only stayed for about 8 days. The evidence as to the number of times the review applicant has returned to Vietnam and the length of time she spends with her husband was not consistent causing the Tribunal to doubt whether the review applicant has on her return to Vietnam spent quality time with her husband as claimed.

65. The Tribunal is also concerned about the inconsistencies in the evidence as to who from the review applicant's family attended the wedding. According to the delegate's decision, the review applicant's aunty, 2 siblings and friends attended her wedding. The submission from the review applicant's representative dated 16 July 2015 submits in response to concerns raised by the delegate over the lack of attendance at the wedding by the review applicant's family that her aunty, 2 siblings and friends attended the wedding. At the Tribunal hearing the visa applicant told the Tribunal that review applicant's aunty and brother attended while the review applicant told the Tribunal that just her older sister attended. The written submission received following the hearing addressing the concerns of the Tribunal put to the review applicant pursuant to s359AA states that they have now been instructed that the review applicant's sister attended the wedding and a person who is referred to as "aunt" by the family. The Tribunal acknowledges that the review and visa applicants may have felt anxious and stressed at participating in the Tribunal hearing; however the Tribunal finds that their evidence as to who attended their wedding from the review applicant's family has been inconsistent through the application process. The Tribunal does not accept the explanation that the visa applicant was confused and incorrectly believed his wife's brother and not sister was at the wedding. The evidence presented clearly indicates that the visa applicant's family and friends attended the wedding. It was submitted that there were 2 representatives from each side to conduct the traditional procedures however the evidence is unclear as to who from the review applicant's family attended and represented her family at her wedding. The Tribunal does not accept that 2 people claiming to be in a genuine relationship would not know who from the bride's family attended the wedding. The Tribunal finds that the review applicant's lack of knowledge as to who from her family attended her wedding goes to her commitment, or lack thereof, to the relationship.
66. The Tribunal is also concerned about the review applicant's lack of knowledge of her husband's family. It was submitted in response to the particulars given to the review applicant pursuant to s359AA following the hearing, that the review applicant has a close relationship with her husband's siblings in Australia and socialises regularly with them. It was submitted that she is aware of their names and experienced a "mental block" at the hearing. The Tribunal does not accept the explanation in the submission. It was clear from the evidence given by the review applicant at hearing she had limited knowledge of the visa applicant's family. She told the Tribunal that in her husband's family they refer to each child as where they come in the family, giving incorrect information as to the position of each member. She also told the Tribunal that her husband was the eldest in the family, when clearly he is not. The Tribunal would expect that if the review applicant was in regular contact with the visa applicant's family in Australia with whom she socialised and was aware of their names, she would not have claimed that they are known as No. 1 or No. 2 or as

younger sister. The Tribunal would expect that the review applicant would be aware that her husband was not the eldest in his family.

67. After considering all the circumstances of the relationship and the totality of the evidence, the Tribunal is not satisfied that the review applicant and the visa applicant have a mutual commitment to a genuine relationship to the exclusion of all others. The Tribunal is not satisfied that the review and visa applicants draw companionship and emotional support from each other.
68. After considering the available evidence, the Tribunal is not satisfied that the parties have a mutual commitment to a shared life to the exclusion of others and that it is a genuine and continuing relationship. The Tribunal is not satisfied that the visa applicant is the spouse of the sponsor within the meaning of r.1.15A.
69. Given these findings the Tribunal is not satisfied that at the time the visa application was made and the time of decision the parties were in a spousal relationship. Therefore, the visa applicant does not meet cl.309.211 and cl.309.221. The secondary applicant does not meet cl.309.321 and there is nothing to suggest they meet the primary criteria for the visa grant.
70. For the reasons above, the visa applicant does not satisfy the criteria for the grant of the visa.

DECISION

71. The Tribunal affirms the decisions not to grant the visa applicants Partner (Provisional) (Class UF) visas.

Amanda Goodier
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.09A De facto partner and de facto relationship

- (1) For subsection 5CB (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5CB (2) (a), (b), (c) and (d) of the Act exist.

Note 1 See regulation 2.03A for the prescribed criteria applicable to de facto partners.

Note 2 The effect of subsection 5CB (1) of the Act is that a person is the de facto partner of another person (whether of the same sex or a different sex) if the person is in a de facto relationship with the other person.

Subsection 5CB (2) sets out conditions about whether a de facto relationship exists, and subsection 5CB (3) permits the regulations to make arrangements in relation to the determination of whether 1 or more of those conditions exist.

- (2) If the Minister is considering an application for:
- (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;
- the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
- (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being in a de facto relationship with each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).